

**Green Acres Program
State House Commission Pre-application
Local Parkland – Major Diversion
Hudson Tunnel Project
Appendix D**

PRELIMINARY COMPENSATION PROPOSAL

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**ATTACHMENT III: PRELIMINARY COMPENSATION PROPOSALS FOR MAJOR
DISPOSALS OR DIVERSIONS OF PARKLAND**

General Notes:

- As part of the application process, applicants are required to submit a preliminary compensation proposal as part of the pre-application, and a final compensation proposal as part of the final application. A preliminary compensation proposal is based on estimates of the value and size of the proposed disposal or diversion and proposed replacement land (if any). As part of the final compensation proposal, the applicant is required to adjust its proposal to take into account the appraised value of the diverted and replacement parcels, the actual surveyed acreage of these lands and any easements or other relevant encumbrances identified through the title search.
- Replacement land is required for certain types of disposals or diversions of parkland, and is generally the method of compensation preferred by the Department. However, in many cases, the applicant may choose between replacement land, monetary compensation or a combination of both. If replacement land is offered, it must be at least equivalent in acreage to the parkland to be disposed of or diverted. If an easement is proposed to be disposed of or diverted from parkland, the ratio of the replacement land to the affected parkland can be 1:1, with either a subsurface easement or fee land as replacement. All other disposals or diversions of parkland are subject to a minimum 2:1 (or higher) replacement land/parkland ratio. However, if the applicant chooses to mix monetary compensation and replacement land, it may offer 1:1 replacement land and make up the difference between the 1:1 land and the minimum 2:1 (or higher) compensation ratio with cash compensation.

This attachment summarizes the requirements of N.J.A.C. 7:36-26.10 and is intended to serve as guidance for the preparation of preliminary and final compensation proposals. Please check the box next to the applicable preliminary compensation proposal category or categories:

N/A ☐ **1. Minimum Compensation Ratios for Replacement Land (taken from Table 1 at NJAC 7:36-26.10(g))**

If the applicant chooses to offer replacement land as the method of compensation the following conditions apply:

- The proposed replacement land must be determined to be eligible pursuant to *N.J.A.C. 7:36-26.10(d)2i-iii*.
- If replacement land is offered, it must be at least equivalent in acreage to the parkland to be disposed of or diverted. (*N.J.A.C. 7:36-26.10(d)3*)
- The proposed replacement land shall be of reasonably equivalent or superior quality and have a market value that is equal to or greater than the parkland proposed for disposal or diversion. (*N.J.A.C. 7:36-26.10(d)5 and 6*)
- If the proposed replacement land is inadequate to meet the market value and quality requirements mentioned above, the Department shall require the applicant to supplement its proposal with additional compensation in excess of that which would otherwise be required under Table 1. (*N.J.A.C. 7:36-26.10(d)7*)
- The replacement lands shall be, to the extent possible, located in the same municipality in which the parkland proposed for disposal or diversion is located and shall not consist of land on which streets are shown on a subdivision plan as either

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offered for dedication or dedicated but not constructed. (*N.J.A.C. 7:36-26.10(d)8 and 9*)

- The proposed replacement land shall either be free of contamination by hazardous substances or shall be remediated to the Department's satisfaction prior to its dedication as parkland. (*N.J.A.C. 7:36-26.10(d)10*)
- The applicant is required to provide appraisals, surveys and title work for any proposed replacement land as part of the final application. (*N.J.A.C. 7:36-26.11(b)1, 2 and 3*) All technical reports must be prepared to the Department's specifications. In some circumstances, appraisal waivers may be available under *N.J.A.C. 7:36-26.10(l)*, if the applicant is willing to propose a higher compensation ratio than would otherwise be required.

The minimum acreage of the replacement land to be provided for a specific type of disposal or diversion of parkland shall be determined in accordance with the provisions outlined below or in Table 1 of *N.J.A.C. 7:36-26.10(g)*. (*N.J.A.C. 7:36-26.10(d)4*)

Subsurface easements:

Project Sponsor	Appraisals	Appraisal waiver	Notes:	Rule Citation:
Public	1:1	1:1	Applicant may offer either a surface easement to be used for recreation and conservation purposes or a fee simple interest in land.	<i>N.J.A.C. 7:36-26.10(i)1</i>
Private	2:1	4:1		

Surface easements:

Project Sponsor	Appraisals	Appraisal waiver	Notes:	Rule Citation:
Public	1:1	2:1	Applicant may offer either a surface easement to be used for recreation and conservation purposes or a fee simple interest in land.	<i>N.J.A.C. 7:36-26.10(i)1</i>
Private	4:1	6:1		

Other Diversions and disposals:

Project Sponsor	Appraisals	Appraisal waiver	Notes:	Rule Citation:
Public	2:1	3:1	- Appraisals must be submitted with the final application package, or; - An appraisal waiver must be obtained pursuant to <i>N.J.A.C. 7:36-26.10(l)</i> .	<i>N.J.A.C. 7:36-26.10(j)1i</i>
Private	4:1	6:1		<i>N.J.A.C. 7:36-26.10(j)1ii</i>

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Legalization of past diversions and disposals:

Project Sponsor	Appraisals	Appraisal waiver	Notes:	Rule Citation:
Public	5:1	10:1	- The Department may/can take mitigating circumstances into account when determining appropriate compensation ratios. - An appraisal waiver cannot be obtained when legalizing a past “private” diversion or disposal.	<i>N.J.A.C. 7:36-26.10(j)3ii</i>
Private	20:1	N/A		<i>N.J.A.C. 7:36-26.10(j)3iv</i>

Please also include the following information in the preliminary compensation proposal when choosing to offer replacement land as compensation:

- Block(s) and lot(s) of any proposed replacement land(s) (*N.J.A.C. 7:36-26.10(d)1iv*); and
- The street address of the proposed replacement land(s), if available (*N.J.A.C. 7:36-26.10(d)1iii*); and
- The size of the proposed replacement land(s) in acres (for replacement land(s) larger than one acre) or square feet (for replacement land(s) smaller than one acre) (*N.J.A.C. 7:36-26.10(d)1iii and iv*); and
- A description of the proposed replacement land(s) (prepared by completing Section II of the Environmental Assessment, **Attachment I**, for each parcel) (*N.J.A.C. 7:36-26.10(d)1i*); and
- A description of the intended recreational and conservation use for the proposed replacement land(s) (*N.J.A.C. 7:36-26.10(d)1ii*); and
- Information sufficient for the Department to verify that the proposed replacement lands are eligible as replacement under *N.J.A.C. 7:36-26.10(d)2i-iii*; and
- A preliminary assessment report, prepared in accordance with the Technical Requirements for Site Remediation, *N.J.A.C. 7:26E*, for each proposed replacement parcel (*N.J.A.C. 7:36-26.9(d)5 and N.J.A.C. 7:36-26.10(d)10*); and

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2. Minimum Compensation Ratios for Monetary Compensation (taken from Table 1 at NJAC 7:36-26.10(g))

Monetary
Compensation will
be paid in the
amount of two
times the
appraised value of
the subsurface
easements
underneath the
parklands to the
Garden State
Preservation
Trust. (\$943,500 x
2 = \$1,887,000)

If monetary compensation is the chosen method of compensation the following conditions apply:

- No county or municipal open space tax funds levied under *N.J.S.A. 40:12-15.1* through 15.9 or other dedicated recreation and conservation funding sources may be used as monetary compensation. (*N.J.A.C. 7:36-26.10(e)2*)
- The applicant must provide confirmation that any proposed monetary compensation for the disposal or diversion of parkland can be transferred to the Department immediately after approval of the application or deposited into a dedicated account to be used only for purposes consistent with the approval. (*N.J.A.C. 7:36-26.10(e)5i and ii*)
- If the applicant is proposing to provide a combination of monetary compensation and replacement land, the compensation proposal must offer at least a 1:1 ratio of replacement land to land diverted or disposed (*N.J.A.C. 7:36-26.10(d)3*).
- The Department can, at its discretion, require additional compensation to adequately compensate for impacts to surrounding parkland. (*N.J.A.C. 7:36-26.10(j)2iii*)

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- If an applicant is proposing monetary compensation for parkland improvements, the applicant shall not utilize the monies for improvements that were already budgeted and/or approved by the applicant; and must complete the parkland improvements within one year of the date of approval of the application. (*N.J.A.C. 7:36-26.10(k)1i and ii*)
- If an applicant is proposing monetary compensation for land acquisition, the applicant shall, at least 30 days prior to each acquisition of replacement land, submit to the Department all outstanding pre-application and final application requirements pertaining to the replacement land for Department review and approval. In addition all replacement land must be acquired within two years of the date of the approval of the application. (*N.J.A.C. 7:36-26.10(k)2ii and iii*)
- If parkland improvements or land acquisitions, as approved by the State House Commission, are not completed within the time frames specified above, the Department may, upon 30 days' written notice, require that the applicant remit to the Department the full amount of the approved monetary compensation for deposit in the GSPT Fund. (*N.J.A.C. 7:36-26.10(k)3*)

The minimum amount of monetary compensation to be provided for a specific type of disposal or diversion of parkland shall be determined in accordance with the provisions outlined below or in Table 1 of *N.J.A.C. 7:36-26.10(g)*. (*N.J.A.C. 7:36-26.10(e)1*)

Subsurface easements:

Project Sponsor	Parkland improvements	Land acquisition	Notes: *\$2,500.00 minimum, even if a lesser amount is determined utilizing the listed ratios.	Rule Citation: <i>N.J.A.C. 7:36-26.10(i)2</i>
Public	2:1*	2:1*		
Private	10:1*	10:1*		

Surface easements:

Project Sponsor	Parkland improvements	Land acquisition	Notes: *\$2,500.00 minimum, even if a lesser amount is determined utilizing the listed ratios.	Rule Citation: <i>N.J.A.C. 7:36-26.10(i)2</i>
Public	4:1*	4:1*		
Private	10:1*	10:1*		

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Other diversions and disposals:

Project Sponsor	Parkland improvements	Land acquisition	Notes:	Rule Citation:
Public	4:1**	4:1**	- The size of parkland to be diverted or disposed must be less than 5 acres and must comprise less than 5% of the total parkland parcel. - **\$5,000.00 minimum, even if a lesser amount is determined utilizing the listed ratios. - If the disposal or diversion is classified as “private” monetary compensation can only be used for land acquisition and not for parkland improvements	<i>N.J.A.C. 7:36-26.10(j)2i</i>
Private	N/A	10:1**		<i>N.J.A.C. 7:36-26.10(j)2ii</i> <i>N.J.A.C. 7:36-26.10(j)1iv</i>

Legalization of past diversions and disposals:

Project Sponsor	Parkland improvements	Land acquisition	Notes:	Rule Citation:
Public	N/A	10:1***	- The Department may/can take mitigating circumstances into account when determining appropriate compensation ratios. - For “public” diversions or disposals, compensation cannot include monetary compensation to be used for parkland improvements. - For “private” diversions or disposals, compensation cannot include monetary compensation to be used for parkland improvements nor can an appraisal waiver be obtained. - ***\$10,000.00 minimum, even if a lesser amount is determined utilizing the listed ratios.	<i>N.J.A.C. 7:36-26.10(j)3ii</i>
Private	N/A	20:1***		<i>N.J.A.C. 7:36-26.10(j)3iii</i> <i>N.J.A.C. 7:36-26.10(j)3iv</i> <i>N.J.A.C. 7:36-26.10(j)3v</i>

At the time of the submittal of the preliminary compensation proposal, please also include in the proposal the following information when choosing to use monies for parkland improvements:

- A detailed description of the type, cost, location and intended use of any proposed parkland improvements (*N.J.A.C. 7:36-26.10(e)3i*);
- Drawings or plans of the parkland improvements (*N.J.A.C. 7:36-26.10(e)3ii*);
- A timetable or schedule for construction and confirmation that the portion of the project being funding by the compensation will be completed within one year of SHC approval of the disposal or diversion (*N.J.A.C. 7:36-26.10(e)3iii* and *N.J.A.C. 7:36-26.10(k)1ii*).

To the extent known at the time of the submittal of the preliminary compensation proposal, please also include in the proposal the following information when choosing to use monies for land acquisition:

- Block(s) and lot(s) of any proposed replacement land(s) (*N.J.A.C. 7:36-26.10(d)1iv*);

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and

- The street address of the proposed replacement land(s), if available (*N.J.A.C. 7:36-26.10(d)1iii*); and
- The size of the proposed replacement land(s) in acres (for replacement land(s) larger than one acre) or square feet (for replacement land(s) smaller than one acre) (*N.J.A.C. 7:36-26.10(d)1iii and iv*); and
- A description of the proposed replacement land(s) (prepared by completing Section II of the Environmental Assessment, **Attachment I**, for each parcel) (*N.J.A.C. 7:36-26.10(d)1i*); and
- A description of the intended recreational and conservation use for the proposed replacement land(s) (*N.J.A.C. 7:36-26.10(d)1ii*); and
- Information sufficient for the Department to verify that the proposed replacement lands are eligible as replacement under *N.J.A.C. 7:36-26.10(d)2i-iii*; and
- A Preliminary Assessment Report, prepared in accordance with the Technical Requirements for Site Remediation, *N.J.A.C. 7:26E*, for each proposed replacement parcel (*N.J.A.C. 7:36-26.9(d)5 and N.J.A.C. 7:36-26.10(d)10*).

N/A ☐

3. Minimum Compensation Ratios for a combination of Replacement Land and Monetary Compensation

If the applicant chooses to provide compensation through a combination of replacement land and monetary compensation the following conditions apply:

- In no case shall the acreage of the replacement land be less than the acreage of the parkland to be disposed of or diverted. The ratio of the replacement land to the parkland proposed to be disposed of or diverted shall be at least 1:1. (*N.J.A.C. 7:36-26.10(d)3*)
- Additional monetary compensation offered beyond the minimum acreage compensation ratio noted above, must be sufficient to compensate in full for any shortfalls in the market value or quality of the proposed replacement land. (*N.J.A.C. 7:36-26.10(d)7*)
- All conditions outlined above in the “Minimum Compensation Ratios for Replacement Land” and the “Minimum Compensation Ratios for Monetary Compensation” must also be adhered to when combining both replacement land and monies into the preliminary compensation proposal.

N/A ☐

4. Minimum Compensation for a Lease or Use Agreements

If a lease or use agreement is determined by the Department to be a “Major Diversion under *N.J.A.C. 7:36-26.2(a) and (c)*, the following conditions apply to the lease or use agreement preliminary compensation proposal presented as part of the pre-application package:

- The compensation offered for a lease or use agreement must be determined, by the Department, to be fair and appropriate for the proposed activity. If it is determined to not be fair and appropriate, the Department shall specify the minimum amount of compensation that must be secured. (*N.J.A.C. 7:36-26.10(c)2i*)
- All payments, rentals or other consideration received by the applicant from the lease or agreement shall be used by the applicant for its operating, maintenance or capital

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expenses related to its funded parkland or to its recreation program as a whole.
(*N.J.A.C. 7:36-26.10(c)2ii*)

N/A ☐ 5. Minimum Compensation for a Loss of any Recreation or Conservation Facilities

If a disposal or diversion, determined by the Department to be a “Major Disposal or Diversion” under *N.J.A.C. 7:36-26.2(a) and (c)*, will result in the loss of recreation or conservation facilities the following conditions apply to the preliminary compensation proposal presented as part of the pre-application package:

- The applicant is required to compensate for the loss of recreation or conservation facilities by providing replacement recreation and conservation facilities of reasonably equivalent usefulness, size, quality and location. The replacement facilities shall be in addition to any replacement land or monetary compensation proposed by the applicant. (*N.J.A.C. 7:36-26.10(c)3*)
- In order to determine if the replacement recreation and conservation facilities are of reasonably equivalent usefulness, size, quality and location, the applicant shall submit the information requested in *N.J.A.C. 7:36-26.10(e)3i - iii* with respect to the replacement of any of recreation or conservation facilities. (*N.J.A.C. 7:36-26.10(c)3*)

N/A ☐ 6. Minimum Compensation for Tree Replacement

If a disposal or diversion, determined by the Department to be a “Major Disposal or Diversion” under *N.J.A.C. 7:36-26.2(a) and (c)*, will result in the removal of any tree with a diameter at breast height greater than six inches or the clear cutting of greater than 0.50 acre of trees, the following conditions apply to the preliminary compensation proposal presented as part of the pre-application package:

- The applicant shall include in the preliminary compensation proposal a tree replacement plan prepared pursuant to *N.J.A.C. 7:36-26.10(c)4* or offer monetary compensation at least equal to the costs that would be incurred with respect to such planting of the replacement trees. (*N.J.A.C. 7:36-26.10(c)4*)
- Provide confirmation that any proposed monetary compensation for tree removal will be transferred to the Department immediately after approval of the application for disposal or diversion of parkland or that a tree replacement plan will be implemented within a one year period following approval of the application. (*N.J.A.C. 7:36-26.10(k)1ii*)

Notes:

The Department will use the information in the preliminary compensation proposal and the value statement required under *N.J.A.C. 7:36-26.9(d)4 and N.J.A.C. 7:36-26.9(d)5* to determine the amount of compensation due for the proposed disposal or diversion of parkland. (*N.J.A.C. 7:36-26.9(i) and N.J.A.C. 7:36-26.10(f)1*)